

**STATE OF NEW MEXICO
BEFORE THE SECRETARY OF ENVIRONMENT**

**NEW MEXICO ENVIRONMENT
DEPARTMENT,
RESOURCE PROTECTION DIVISION,
Complainant,**

v.

**KACHIANA PETROLEUM EQUIPMENT
CO.,
EPA ID #: NMR000015800
Respondent.**

NO. HWB-20-____ (AO)

ADMINISTRATIVE COMPLIANCE ORDER

Pursuant to the New Mexico Hazardous Waste Act (“Act”), NMSA 1978, Sections 74-4-1 to -14, the Hazardous Waste Bureau (“Bureau”) of the Resource Protection Division (“Division”) of the New Mexico Environment Department (“NMED” or “Department”), issues this Administrative Compliance Order (“Order”) to Kachina Petroleum Equipment Co., (“Kachina” or “Respondent”). This Order requires that Kachina, located at 9600 Bell Avenue NE, Albuquerque, New Mexico (the “Facility”), comply with the Act and the Hazardous Waste Management Regulations (“Regulations”), 20.4.1 NMAC, and assesses civil penalties for violations of the Act and the Regulations.

I. FINDINGS

A. PARTIES

1. Pursuant to the Department of Environment Act, NMSA 1978, Sections 9-7A-1 to -15, NMED is an agency of the executive branch within the government of the State of New Mexico.

2. NMED, through the Bureau, is charged with administration and enforcement of

the Act and the Regulations.

3. The U.S. Environmental Protection Agency (“EPA”) has granted the State of New Mexico delegated authority to implement the federal Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. Sections 6901 to 6992k, within the state. The Regulations incorporate portions of Title 40 of the Code of Federal Regulations (“C.F.R.”) Sections 260 through 270, 40 C.F.R. Section 279 and related federal regulations by reference.

4. The State of New Mexico adopted the federal hazardous waste regulations by reference on June 14, 2000. The State of New Mexico subsequently amended the Regulations on March 1, 2009 and on December 1, 2018, to adopt changes to the federal hazardous waste regulations.

5. Respondent is a “person” within the meaning of NMSA 1978, Section 74-4-3(M) of the Act.

6. Respondent is a New Mexico for-profit corporation.

7. Respondent notified NMED on August 12, 2010 as a Small Quantity Generator (“SQG”) of hazardous waste, under EPA I.D. Number NMR000015800.

8. Respondent’s facility is located at 9600 Bell Avenue SE, Albuquerque, New Mexico (“Facility”).

B. INVESTIGATION – July 24, 2019

9. On July 24, 2019, NMED conducted a routine Compliance Evaluation Inspection (“Inspection”).

10. The Inspection included a physical review of the Facility and the records required to be maintained at the Facility according to 40 C.F.R. Section 262.16.

11. During the Inspection, NMED identified eight potential violations.

12. The Regulations provide that owners and operators of SQGs are subject to regulation under 40 C.F.R. Section 262.11; therefore, the Respondent must make a hazardous waste determination on all waste streams generated by the Facility, as required by 20.4.1.300 NMAC, incorporating 40 C.F.R. Section 262.11.

13. During the Inspection on July 24, 2019, NMED inspectors observed twelve containers located on the Respondent's property identified as containing water, waste gasoline, and waste diesel fuel. Specifically, these drums of gasoline and diesel fuel contaminated wastewater were observed in the storage lot to the east of the Facility. NMED inspectors also observed waste fuel contaminated solids, including waste rags/wipes, waste parts and components, waste Personal Protective Equipment ("PPE"), and waste fuel filters, in addition to waste fluorescent light bulbs. Kachina failed to make a hazardous waste determination for any of these regulated waste streams.

14. The Regulations provide that owners and operators of SQGs are subject to regulations under 40 C.F.R. Section 262.20(a)(1); therefore, they must prepare waste manifests for offsite shipments of hazardous waste, as required by 20.4.1.300 NMAC, incorporating 40 C.F.R. Section 262.20(a)(1).

15. During the Inspection on July 24, 2019, the Respondent had not completed hazardous waste manifests but used Bills of Lading for disposal of their waste.

16. The Regulations provide that SQGs are subject to regulations in 40 C.F.R. Section 262.16(b)(6)(i)(C); therefore, they must keep containers of hazardous waste in a Central Accumulation Area ("CAA") labeled with an Accumulation Start Date ("ASD"), as required by 20.4.1.300 NMAC, incorporating 40 C.F.R. Section 262.16(b)(6)(i)(C).

17. During the Inspection on July 24, 2019, NMED inspectors observed twelve 55-

gallon drums storing gasoline and diesel fuel contaminated-wastewater lacking ASDs stored in the east storage yard.

18. The Regulations provide that SQGs are subject to regulations under 40 C.F.R. Section 262.16(b)(6)(i)(A); therefore, they must label all CAA containers with the words “Hazardous Waste” as required by 20.4.1.300 NMAC, incorporating 40 C.F.R. Section 262.16(b)(6)(i)(A).

19. During the Inspection on July 24, 2019, NMED inspectors observed twelve unlabeled 55-gallon drums storing gasoline and diesel fuel contaminated wastewater. The containers were located in the eastern storage yard.

20. The Regulations provide that SQGs are subject to regulations under 40 C.F.R. Section 262.16(b)(9)(iii); therefore, they must provide employees training on proper waste handling relevant to their responsibilities during normal facility operations and procedures, as required by 20.4.1.300 NMAC, incorporating 40 C.F.R. Section 262.16(b)(9)(iii).

21. During the Inspection on July 24, 2019, the Respondent could not produce any record or other evidence that employees have been given adequate training regarding hazardous waste handling, storage, and disposal as relevant to their job duties.

22. The Regulations provide that SQGs are subject to regulations under 40 C.F.R. § 262.16(b)(6)(i)(B); therefore, they must mark each container storing hazardous waste with an indication of the hazard of the contents, as required by 20.4.1.300 NMAC, incorporating 40 C.F.R. § 262.16(b)(6)(i)(B).

23. During the Inspection on July 24, 2019, NMED inspectors observed that numerous containers storing hazardous wastes lacked an indication of the hazards of the contents.

24. The Regulations provide that hazardous waste transporters are subject to regulations under 40 C.F.R. Section 263.20; therefore, they must obtain a hazardous waste manifest from a generator prior to the transportation of hazardous waste, as required by 20.4.3.500 NMAC, incorporating 40 C.F.R. Section 263.20.

25. During the Inspection on July 24, 2019, NMED inspectors observed that Kachina regularly transports hazardous waste that is generated at customer's sites back to the Facility. No hazardous waste manifests are prepared for these shipments of hazardous waste.

26. The Regulations provide that SQGs are subject to regulations under 20.4.3.500 NMAC; therefore, they must pay hazardous waste generator fees for hazardous wastes generated during a calendar year, as required by 20.4.3 NMAC.

27. During the Inspection on July 24, 2019, NMED inspectors observed that Kachina has not paid hazardous waste generator fees for hazardous waste generation and accumulation as a SQG for calendar years 2016, 2017, and 2018.

II. VIOLATIONS

28. Respondent's failure to make a hazardous waste determination is a violation of 20.4.1.300 NMAC, incorporating 40 C.F.R. Section 262.11.

29. Respondent's failure to prepare a hazardous waste manifest for offsite shipments of hazardous waste is a violation of 20.4.1.300 NMAC, incorporating 40 C.F.R. Section 262.20(a)(1).

30. Respondent's failure to mark containers of hazardous waste with an ASD is a violation of 20.4.1.300 NMAC, incorporating 40 C.F.R. Section 262.16(b)(6)(i)(C).

31. Respondent's failure to label a CAA container with the words "Hazardous Waste" is a violation of 20.4.1.300 NMAC, incorporating 40 C.F.R. Section 262.16(b)(6)(i)(A).

32. Respondent's failure to provide employees with adequate training is a violation of 20.4.1.300 NMAC, incorporating 40 C.F.R. Section 262.16(b)(9)(iii).

33. Respondent's failure to mark containers of hazardous waste with an indication of the hazards is a violation of 20.4.1.300 NMAC, incorporating 40 C.F.R. Section 262.16(b)(6)(i)(B).

34. Respondent's failure to obtain a manifest prior to transporting hazardous waste is a violation of 20.4.3.500 NMAC, incorporating 40 C.F.R. Section 263.20.

35. Respondent's failure to pay hazardous waste generator fees is a violation of 20.4.3 NMAC.

36. On October 2, 2019 the Bureau issued a Notice of Violation ("NOV") to Respondent, describing the above violations, and requiring corrective action.

37. On October 28, 2019 the Bureau received a written response to the NOV from Kachina. The Bureau evaluated the response and found that it did not adequately address the violations described in the NOV.

38. On February 18, 2020 the Bureau sent a letter to Respondent, outlining the deficiencies in the NOV response.

39. On March 3, 2020, the Department received an email from Kachina's attorney indicating they would respond by March 20, 2020.

40. To date, the Bureau has not received a response from Kachina with the requested completed corrective actions.

III. SCHEDULE OF COMPLIANCE

41. Based upon the foregoing findings and conclusions, Respondent is hereby ordered to take the following corrective actions, according to the following schedule, to achieve

compliance with the Act and the Regulations.

42. No later than 30 days after receipt of this Order, Respondent shall submit a written response describing all actions taken by the Respondent in response to the violations identified herein. The response shall include photos, procedures documents, disposal records and any other relevant records, that document the actions taken by the Respondent to remedy any compliance deficiencies related to the July 24, 2019 Inspection. Any written response must include appropriate evidence and a certification from a responsible official designated to act on behalf of Kachina. The certification of the responsible official shall state: "I certify under penalty of law that this information in this letter and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering such information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

a. The Respondent's written response shall contain a description of the corrective actions to ensure that a hazardous waste determination is made for all waste streams generated by the Respondent consistent with 20.4.1.300 NMAC, incorporating 40 C.F.R. Section 262.11.

b. The Respondent's written response shall contain a description of the corrective actions to ensure that hazardous waste manifests are prepared for offsite shipments of hazardous waste consistent with 20.4.1.300 NMAC, incorporating 40 C.F.R. Section 262.20(a)(1).

c. The Respondent's written response shall contain a description of the corrective actions to ensure that hazardous waste containers in CAAs are labeled with ASDs consistent with 20.4.1.300 NMAC, incorporating 40 C.F.R. Section 262.16(b)(6)(i)(C).

d. The Respondent's written response shall contain a description of the corrective actions to ensure that all CAA containers are labeled consistent with 20.4.1.300 NMAC, incorporating 40 C.F.R. Section 262.16(b)(6)(i)(A).

e. The Respondent's written response shall contain a description of the corrective actions to ensure that the employees are adequately trained on proper hazardous waste handling procedures relevant to their responsibilities during normal Facility operations and procedures consistent with 20.4.1.300 NMAC, incorporating 40 C.F.R. Section 262.16(b)(9)(iii).

f. The Respondent's written response shall contain a description of the corrective actions to ensure that the Respondent is labeling each container storing hazardous waste with an indication of the hazards consistent with 20.4.1.300 NMAC, incorporating 40 C.F.R. Section 262.16(b)(6)(i)(B).

g. The Respondent's written response shall contain a description of the corrective actions to ensure that the Respondent will not be transporting hazardous waste without having first received a hazardous waste manifest, and not without complying with all applicable hazardous waste transporter regulations consistent with 20.4.1.300 NMAC, incorporating 40 C.F.R. Section 263, including 40 C.F.R. Section 263.20.

h. The Respondent's written response shall contain a description of the

corrective actions taken to ensure that the Respondent has paid current and past due hazardous waste generator fees consistent with 20.4.3 NMAC.

IV. CIVIL PENALTY

43. Pursuant to NMSA 1978, Sections 74-4-10(B) and 74-4-12 of the Act, the Respondent is liable for a civil penalty of up to \$10,000.00 per day of noncompliance for each violation of the Regulations. The Department hereby assesses a civil penalty of \$20,100.00 against the Respondent for the violations described above.

44. No later than 30 days after receipt of this Order, the Respondent shall make payment to the State of New Mexico-Hazardous Waste Emergency Fund by certified check, bank draft or other guaranteed negotiable instrument, and mailed to or hand delivered to:

Kevin Pierard, Chief
Hazardous Waste Bureau
New Mexico Environment Department
2905 Rodeo Park Drive East, Building 1
Santa Fe, New Mexico 87505.

A copy of the transmittal letter shall be sent to counsel for the Department.

45. If the Respondent is unable or has limited ability to pay, the Respondent must demonstrate this with auditable financial documents.

V. NOTICE OF POTENTIAL ADDITIONAL PENALTIES

46. If the Respondent fails to comply in a timely manner with the Schedule of Compliance, the Secretary may assess additional civil penalties of up to \$25,000 for each day of continued noncompliance pursuant to NMSA 1978, Section 74-4-10(C) of the Act.

VI. RIGHT TO ANSWER AND REQUEST A HEARING

47. Pursuant to NMSA 1978, Section 74-4-10(H) of the Act, and NMED's Adjudicatory Procedures, 20.1.5.200 NMAC, the Respondent may file a written request for a

public hearing with the Hearing Clerk no later than 30 days from the receipt of this Order. An Answer must be filed with the Request for Hearing. The Answer shall:

a. Clearly and directly admit, deny, or explain each of the factual allegations contained in this Order with regard to which the Respondent has any knowledge.

Where the Respondent has no knowledge of a particular factual allegation, the Respondent shall so state, and the Respondent may deny the allegation on that basis.

Any allegation of the Order not specifically denied shall be deemed admitted.

20.1.5.200.A(2)(a) NMAC.

b. Assert any affirmative defenses upon which the Respondent intends to rely. Any affirmative defense not asserted in the Answer, except a defense asserting lack of subject matter jurisdiction, shall be deemed waived. 20.1.5.200.A(2)(b) NMAC.

c. Be signed under oath or affirmation that the information contained therein is, to the best of the signer's knowledge, believed to be true and correct.

20.1.5.200.A(2)(c) NMAC.

d. Include a copy of this Order attached. 20.1.5.200.A(2)(d) NMAC.

The Answer and Request for Hearing shall be filed with the Hearing Clerk at the following address:

Cody Barnes, Hearing Clerk
New Mexico Environment Department
1190 Saint Francis Drive, S-2103
P.O. Box 5469
Santa Fe, New Mexico 87502

Respondent must also serve a copy of the Request for Hearing on counsel for the Bureau.

VII. FINALITY OF ORDER

48. This Order shall become final unless the Respondent files a Request for Hearing

and Answer with the Hearing Clerk within 30 days after the date of receipt of this Order pursuant to NMSA 1978, Section 74-4-10(H).

VIII. SETTLEMENT CONFERENCE

49. Whether or not the Respondent requests a hearing and files an Answer, the Respondent may confer with the Bureau concerning settlement. Settlement is encouraged consistent with the provisions and objectives of the Act. Settlement discussions do not extend the 30-day deadline for filing the Respondent's Answer and Request for Hearing or alter the deadlines for compliance with this Order. Settlement discussions may be pursued as an alternative to and simultaneously with the hearing proceedings. The Respondent may appear at the settlement conference on its own behalf or may be represented by legal counsel.

50. Any settlement reached by the Parties shall be finalized by written settlement agreement and stipulated final order. A settlement agreement must serve to resolve all issues raised in the Order, shall be final and binding on all Parties to the Order, and shall not be appealable.

51. To explore the possibility of settlement in this matter, the Respondent may contact Andrew Knight, Office of General Counsel, New Mexico Environment Department, 121 Tijeras Ave. NE, Suite 1000, Albuquerque, New Mexico 87102, (505) 222-9540, andrew.knight@state.nm.us.

IX. TERMINATION

52. This Order shall terminate when the Respondent certifies that all requirements of this Order have been met and the Department has approved such certification, or when the Secretary of the Environment approves a settlement agreement and signs a stipulated final order.

X. COMPLIANCE WITH OTHER LAWS

53. Compliance with the requirements of this Order does not remove the obligation to comply with all other applicable laws and regulations.

54. Pursuant to the NMED Delegation Order dated January 15, 2020, the Cabinet Secretary has delegated the authority to sign Hazardous Waste Act Compliance Orders to the Director of the Resource Protection Division.

STEPHANIE STRINGER, DIRECTOR
RESOURCE PROTECTION DIVISION

DATE: _____

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Administrative Compliance Order was mailed on this _____

day of July 2020, via Certified Mail, Return Receipt Requested, to the following:

Brent Neil
President
Kachina Petroleum Equipment Company
9600 Bell Avenue SE
Albuquerque, NM 87123

Andrew Knight, Assistant General Counsel
New Mexico Environment Department